

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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MB Docket No. 05-311

**COMMENTS OF THE CITY OF NORFOLK, VIRGINIA**

These Comments are filed by the City of Norfolk, Virginia ("Norfolk") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Norfolk believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Norfolk is a City with a population of approximately 242,000. Our franchised cable provider is Cox Communications Hampton Roads, LLC. Our community has negotiated cable franchises since 1974.

**Our Current Franchise**

Our current franchise began on January 11, 2005 and expires on January 10, 2017. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Norfolk in the amount of 5 % of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have two channels devoted to governmental access and one channel devoted to educational access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

The cable operator was required to provide Norfolk with a capital grant of One Million and No/100 Dollars (\$1,000,000), payable upon acceptance of the Franchise. The cable operator is required to provide the City with a second capital grant of Five Hundred Thousand and No/100 Dollars (\$500,000) on the fifth anniversary of the effective date of the franchise. These funds are required to be used in the discretion of Norfolk for capital equipment and facilities for educational and governmental access programming.

Our franchise contains the following institutional network ("I-Net") requirements:

The cable operator and Norfolk were required to enter into good faith negotiations to reach agreement to enhance the existing commercial services agreement between Cable operator (or Cable operator's Affiliate) and the City to provide communications services with at least One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) in benefits to Norfolk. The franchise provided for a deadline of March 31, 2005, but was extended by mutual agreement. The franchise provided that in the event the parties could not reach mutual agreement on the terms of an enhanced commercial services agreement, or could not agree to extend negotiations upon reaching the deadline, the following shall occur:

The cable operator was required to provide Norfolk with a capital grant of Seven Hundred Fifty Thousand Dollars and No/100 (\$750,000), payable with thirty (30) days of the cable operator receiving written notice from Norfolk that negotiations over the commercial services agreement were terminated. These funds were to be used in the discretion of the City for capital equipment and facilities for educational and governmental access programming, and

The parties subsequently reached agreement whereby the cable operator provided benefits in the amount of \$1,500,000.00 in capital costs for the construction of an I-Net, which connected to eleven City buildings.

The I-Net has been constructed, but has not yet been implemented. The most critical and sensitive sites which impact homeland security, such as police and fire stations as well as utility systems, will be implemented first. We also plan to use our I-Net facilities for remote training and control of traffic lights.

Our franchise contains the following requirements regarding emergency alerts:

The cable operator is required to comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time. These emergency alert requirements provide an

important avenue of communication with our residents in the event of an emergency. This function has been helpful in providing emergency weather-related information to our residents.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

Local Office. The cable operator is required to maintain a convenient local customer service and bill payment location in Norfolk where subscribers can receive face-to-face service. The facility must be adequately staffed in order to address customer inquiries, receive bill payments and perform equipment exchanges. The facility must be open during Normal Business Hours. In addition, the cable operator is required to maintain at least one drop box within the Service Area for receiving Subscriber payments after hours.

The cable operator is also required to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

A. Cable System office hours and telephone availability:

1. The cable operator is required to maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained cable operator representatives must be available to respond to customer telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained cable operator representative on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, cannot exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time may not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

3. The cable operator is required to acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above.

4. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during Normal Business Hours.

B. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards must be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

1. Standard Installations are required to be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.

2. Excluding conditions beyond the control of the cable operator, the cable operator is required to begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

3. The "appointment window" alternatives for Installations, Service calls, and other Installation activities must be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Cable operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

4. The cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

5. If the cable operator's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer must be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

C. Communications between the cable operator and Subscribers:

1. Notifications to Subscribers:

a. The cable operator must provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers (including Norfolk and other recipients of complimentary services), and at any time upon request:

i. Products and Services offered;

- ii. Prices and options for programming services and conditions of subscription to programming and other services;
- iii. Installation and Service maintenance policies;
- iv. Instructions on how to use the Cable Service;
- v. Channel positions of the programming carried on the System; and
- vi. Billing and complaint procedures, including the address and telephone number of Norfolk.

b. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the cable operator. In addition, the cable operator must notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 9.02(C)(1). The cable operator is not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.

c. The cable operator is required to provide information to businesses or Subscriber within the City that request information regarding services offered by the cable operator.

## 2. Billing:

a. Bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills must also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within thirty (30) days.

## 3. Refunds: Refund checks will be issued promptly, but no later than either:

a. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

b. The return of the equipment supplied by the cable operator if Service is terminated.

4. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

#### Rebate Policy.

A. If the cable operator's Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, its Subscribers must be credited pro rata for such interruption. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

B. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, the cable operator is required to prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.

Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid. Late Fees may not exceed the actual costs to the cable operator of late payment of bills and the servicing and collecting of such accounts.

Drop Box Payments. Payments at the cable operator's drop box locations shall be deemed received on the date such payments are picked up by the cable operator. The cable operator shall pickup drop box payments no less frequently than one business day after each and every due date for Subscriber bills.

#### Annual Subscriber Survey.

A. The cable operator is required to conduct an annual survey of Subscribers. The survey must be prepared and conducted in good faith so as to provide reasonably reliable measures of Subscriber satisfaction with:

1. Signal quality;
2. Response to Subscriber complaints;
3. Billing practices;
4. Programming services.

B. The cable operator may satisfy the requirements of this Section through a telephone survey conducted by a Person in the business of regularly conducting telephone surveys.

Interruption of Service. The cable operator may interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption upon request.

Periodic Evaluation.

- A. Norfolk may require evaluation sessions during the term of this Franchise, upon fifteen (15) days written notice to the cable operator, provided, however, there shall not be more than one review session during any five (5) year period.
- B. Topics which may be discussed at any evaluation session include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics Norfolk or the cable operator deem relevant.
- C. During an evaluation by Norfolk, the cable operator must fully participate and cooperate with Norfolk and must provide without cost readily available information and documents as Norfolk may reasonably request to perform the evaluation.
- D. As a result of a periodic review or evaluation session, Norfolk may request the cable operator to modify the System or to provide additional Services. The cable operator is required to use its best efforts to implement the modifications requested by Norfolk if the cable operator, in its discretion, determines the modifications are technologically and economically feasible.

Our initial franchise with an effective date of July 23, 1974 contains the following reasonable build schedule for the cable operator:

Within ninety (90) days of receipt of certificates permits and agreements, the cable operator was to commence construction. Thereafter, construction was required to proceed at such a rate so as to make service available to all members of the public desiring such service at the earliest possible time. The cable operator was required to fully construct and make operational the System within three years following the date on which construction commenced. At least thirty-five percent (35%) of the system was required to be constructed and made operational during the first twelve (12) months following commencement of construction and at least an additional thirty-five percent (35%) was required to be constructed and made operational during the second twelve (12) months.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

Line Extension.

The cable operator is required to construct and operate its Cable System so as to provide Service to all parts of its Franchise Area as provided in this Franchise and having a density equivalent of seven (7) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.

Where the density is less than that specified above, the cable operator is required to inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on the cable operator's System must be connected to the System at no charge other than the Standard Installation charge. The cable operator is required, upon request by any potential Subscriber residing in Norfolk beyond the one hundred fifty (150) foot limit, to extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.

Under Normal Operating Conditions, if the cable operator cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, the cable operator is required to provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject the cable operator to appropriate enforcement actions. This section does not apply to the introduction of new products and Services when the cable operator is utilizing a phased introduction.

Upon the annexation of any additional land area by Norfolk, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 5. If the annexed area is served by a cable operator, the cable operator has the option to extend its Cable System to the newly annexed area if the cable operator determines that it is economically feasible to do so. Upon the annexation of any additional land area by Norfolk, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by Norfolk to the cable operator. A cable operator other than the cable operator whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from Norfolk.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

The cable operator is required to maintain and operate for the term of the franchise a System providing a minimum of 750 MHz capacity. The design specifications are set forth in an exhibit to the franchise and are incorporated as part of



the franchise. The System must utilize a hybrid fiber-coaxial architecture and must be designed with the capability to transmit return signals upstream in the 5-42 MHz spectrum.

Our franchise contains a "most-favored-nations" provision which states the following:

City and Grantee recognize that Grantee's System is operated as part of Grantee's greater Hampton Roads regional organization. To assure that Grantee's Cable System in the City maintains the same capabilities as other systems operated by Grantee in the Hampton Roads region, Grantee agrees that when one (1) or more of Grantee's Cable Systems in Hampton Roads obtains a capability with respect to any Cable Service that exceeds that provided by Grantee in the City, the City may require Grantee to provide the same capability on its System in the City. Grantee shall complete any necessary modification of its System within twelve (12) months of receipt of the City's request.

This Section 5.02 shall not apply to capabilities provided by Grantee in areas that are (1) subject to effective competition, or; (2) are part of a service trial or new service launch that is less than two (2) years old.

Our franchise contains the following insurance and bonding provisions:

Insurance.

A. As a part the indemnification provided by Section 10.09, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect as its sole expense, an acceptable policy or policies of liability insurance with a company licensed to do business in the State of Virginia with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, comprehensive general liability insurance, products/completed operations liability, personal injury liability, broad form property damage, contractual liability, automobile liability (owned, non-owned and hired automobiles) and workers compensation. The policy or policies (except for workers compensation) shall name the City, its officers, agents and employees as additional insureds for claims arising out of or in connection with the construction, operation, maintenance, repair, or removal of, or any other action of Grantee with respect to, the System, any Service or related activity, or the distribution of any Service over the System. Grantee will provide comprehensive liability coverage and automobile liability coverage with a combined single limit of not less than One Million Dollars

(\$1,000,000.00), and an Excess Liability Policy with a combined single limit of not less than Two Million Dollars (\$2,000,000.00). The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provision of Section 10.09.

B. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each certificate of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City and that such notice shall be transmitted postage prepaid, and return receipt.

#### Performance Bond.

A. At the time the Franchise becomes effective and at all times thereafter until System upgrade/construction has been completed, the Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of Three Hundred Thousand Dollars (\$300,000.00). This bond will be conditioned upon the faithful performance by the Grantee of its System upgrade/construction obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes, due City which arise by reason of the construction, operation, or maintenance of the System. City may, from year to year, in its sole discretion, reduce the amount of the bond.

B. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

C. The bond shall be subject to the reasonable approval of the City and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after

receipt by the City by registered mail, return receipt requested mail, of a written notice of intent to cancel or not to renew.”

Letter of Credit.

- A. At the time this Franchise is accepted, Grantee shall provide to the City a Letter of Credit in the principal amount of Twenty Thousand Dollars (\$20,000.00).
- B. The Letter of Credit shall serve as security for:
  - 1. The faithful performance by Grantee of all the terms and conditions of the Franchise;
  - 2. Any expenditure, damage or loss incurred by the City occasioned by Grantee’s unexcused or uncured failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Franchise;
  - 3. The payment by Grantee of all lawful liens and taxes, and all damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of Grantee, and all other payments due the City from Grantee pursuant to this Franchise; and
  - 4. The loss of any payments required to be made by Grantee to the City which would have been received by the City but for Grantee’s failure to perform its obligations pursuant to this Franchise, during the period of time between Grantee’s unexcused or uncured failure to perform on the date in which the City takes over, or, authorized any other Person to take over, the construction, operation or maintenance of the System necessitated by such failure.
- C. Provision shall be made to permit the City to make draws against the Letter of Credit. Grantee shall not use the Letter of Credit for other purposes and shall not assign, pledge or otherwise use this Letter of Credit as security for any purpose.
- D. Within five (5) days after notice to it that any amount has been drawn by the City against the Letter of Credit pursuant to this section, Grantee shall restore such Letter of Credit to the required amount.
- E. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) days notice of such failure by the City to comply with any provision of the Franchise

which the City reasonably determines can be remedied by an expenditure of the security, the City may then seek to withdraw such funds from the Letter of Credit.

F. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each certificate of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City and that such notice shall be transmitted postage prepaid, and return receipt.

Work Performed by Others.

A. Grantee shall be responsible for, defend, indemnify and hold the City harmless for any claims or liability arising out of work performed by Persons on behalf of Grantee pursuant to this Franchise.

B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services on behalf of Grantee pursuant to the provisions of this Franchise.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The franchise contains the following provisions:

A. Grantee shall obtain all necessary permits from the City before commencing any construction or extension of the System, including the opening or disturbance of any Street, or private or Public Property within the City. Grantee shall strictly adhere to all building and zoning codes, all administrative manuals and regulations, specifically including the City's Right-of-Way Excavation and Restoration Manual, dated July 1, 2002, as amended, currently or hereafter applicable to construction, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.

B. Grantee or other Person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including the Virginia Department of Transportation flagging requirements and the Virginia Work Area Protection Manual dated January 2003, as amended.

C. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

D. Grantee shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of Public Ways disturbed by Grantee, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by Grantee.

E. Immediately after any repair or extension of the System or any portion thereof or any pavement cut by Grantee in any Public Way of the City, the incidental trenches or excavations shall be refilled by Grantee in accordance with the City's Right-of-Way Excavation and Restoration Manual dated July 1, 2002, as amended. Pavement, sidewalks, curbs, gutters or any other portions of Public Ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by Grantee at its own expense; however, where it is necessary, and if authorized by the City, in order to achieve the former conditions, Grantee shall use materials whose type, specification and quantities exceed or are different from those used in the Installation, then Grantee at its own expense shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, Grantee shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the Director of Public Works and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the Director of Public Works.

F. In cases of emergency, including loss of Service to customers, Grantee shall not be required to obtain a permit to effectuate a repair of its System necessary to restore service or otherwise respond the emergency. In such circumstance, Grantee shall immediately notify the City upon commencement of repairs in the Public Ways.

The franchise agreement provides for the following enforcement provisions by which we are able to ensure that the cable operator is abiding by its agreement:

Liquidated Damages from Letter of Credit. The City and Grantee understand and agree that the failure to comply with any time and performance requirements set forth in this Franchise will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non-performance.

The City and Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specific damage. The liquidated damages are 2004 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index for Urban Area ("CPI U"). Provided however, the liquidated damage amounts shall first be increased from 2004 levels in the year the CPI U increase from 2004 levels equals or exceeds fifteen percent (15%). For example, if the CPI U rises four percent (4%) in 2005, five percent (5%) in 2006 and six percent (6%) in 2007, then the liquidated damage amounts would be increased fifteen percent (15%) in 2007, and thereafter would increase annually.

A. For failure to provide a System meeting the minimum requirements set forth in Section 5 of this Franchise, the liquidated damages amount shall be Five Hundred and No/100 Dollars (\$500.00) per day for each day, or part thereof, such breach occurs or continues.

B. For failure to comply with the requirements of Section 5.02 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each day, or part thereof, such breach occurs or continues.

C. For failure to test, analyze and report on the performance of the System following a reasonable request by the City pursuant to Section 5.05 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per day.

D. For failure to provide the access Channels and programming origination points in accordance with Section 6.02 of this Franchise, the liquidated damages amount shall be Three Hundred and No/100 (\$300.00) per day for each day, or part thereof, such breach occurs or continues.

E. For failure to comply with I-Net requirements in accordance with Section 6.05 of this Franchise, the liquidated damages amount shall be Five Hundred and No/100 Dollars (\$500.00) per day.

F. For failure of Grantee to comply with the construction, operation or maintenance standards set forth in Section 7 of this Franchise, the liquidated damages amount shall be Five Hundred and No/100 Dollars (\$500.00) per day.

G. For failure to comply with all reasonable conditions of the City permits to disturb Streets, fix Streets, or other terms or conditions of the City, pursuant to Section 7 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per day.

H. For failure to provide data, documents, reports or information to City pursuant to Section 8 of this Franchise, or to participate with the City during a System evaluation pursuant to Section 9.08 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/ 100 Dollars (\$250.00) per day.

I. For failure to maintain a local office pursuant to Section 9.01 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/ 100 Dollars (\$250.00) per day for each day, or part thereof, such breach occurs or continues.

J. For failure to comply with the customer service standards measured on a quarterly basis contained in Section 9.02 (A) and (B) of this Franchise, the liquidated damages amount shall be Three Thousand and No/ 100 Dollars (\$3,000) per calendar quarter for each subsequent quarter of non-compliance.

K. For failure to comply with the customer service standards of Section 9.02(C) of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each day, or part thereof, such breach occurs or continues.

L. For failure to obtain or maintain the bond, letter of credit or insurance in a timely fashion pursuant to Section 10 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/ 100 Dollars (\$250.00) per day for each day, or part thereof, such breach occurs or continues.

M. For failure to comply with the system transfer provisions pursuant to Section 12 of this Franchise, the liquidated damages amount shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues, measured from the date of the closing of the transaction in question.

#### Procedure for Imposition of Liquidated Damages.

A. Whenever the City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, for which relief is available against the Letter of Credit, a written notice shall be given to Grantee informing it of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may resort to the Letter of Credit. Grantee may, within seven (7) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with reasonable detail the matters

disputed by Grantee and shall stay the running of the above-described time.

1. The City or its designee shall hear Grantee's dispute at a meeting called in a timely manner. Grantee shall be afforded notice of the meeting not less than ten (10) business days prior to the meeting and afforded an opportunity to participate in and be heard at this meeting, including the opportunity to introduce evidence. The City or its designee shall supplement the decision with written findings of fact.

2. If after hearing the dispute the claim is upheld by the City, Grantee shall have ten (10) business days from notice of such a determination within which to file an appeal with an appropriate state or federal court or agency.

B. The time for Grantee to correct any violation or liability may be extended by the City if the necessary action to correct such violation or liability is of such a nature or character to require more than thirty (30) days within which to perform, provided Grantee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability. City and Grantee agree that for violations involving Section 9.02(A) and (B) of this Franchise, Grantee shall be given a calendar quarter to cure such violation.

C. The rights reserved to the City with respect to the Letter of Credit are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall affect any other right the City may have.

D. As a part the indemnification provided by Section 10.09, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect as its sole expense, an acceptable policy or policies of liability insurance with a company licensed to do business in the State of Virginia with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, comprehensive general liability insurance, products/completed operations liability, personal injury liability, broad form property damage, contractual liability, automobile liability (owned, non-owned and hired automobiles) and workers compensation. The policy or policies (except for workers compensation) shall name the City, its officers, agents and employees as additional



insureds for claims arising out of or in connection with the construction, operation, maintenance, repair, or removal of, or any other action of Grantee with respect to, the System, any Service or related activity, or the distribution of any Service over the System. Grantee will provide comprehensive liability coverage and automobile liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000.00), and an Excess Liability Policy with a combined single limit of not less than Two Million Dollars (\$2,000,000.00). The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provision of Section 10.09.

Financial Books and Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to applicable laws. Grantee shall produce such books and records for City's inspection at Grantee's local office located within thirty (30) miles of the City or at such other mutually agreed upon location within the City.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

#### **Compliance with Federal, State and Local Laws.**

A. If any federal or state law or regulation shall require or permit Grantee to perform any service or act or shall prohibit Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee shall notify the City of the point of conflict believed to exist

between such law or regulation and this Franchise. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

C. If any section, sentence, clause or phrase of this Franchise or any part thereof is for any reason found to be inconsistent with the rules and regulations of the FCC or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Franchise or any part thereof.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, the franchise contains the following provisions setting forth procedures for revocation:

#### Procedures for Revocation.

The City shall provide Grantee with a written notice of the cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. The City shall provide Grantee with written findings of fact which are the basis of the revocation.

Grantee shall be provided the right to a public hearing affording due process before the City prior to revocation, including the opportunity to introduce evidence and testimony for consideration by the City.

After the public hearing and upon determination by the City to revoke the Franchise, Grantee shall have a period of thirty (30) days, from the date of the City's determination, within which to file an appeal with an appropriate state or federal court or agency.

During the appeal period, the Franchise shall remain in full force and effect.

The Letter of Credit provided pursuant to this Section shall become the property of the City in the event that the Franchise is revoked for cause. Grantee, however, shall be entitled to the return of the Letter of Credit as remains on file at the expiration of the term of the Franchise.

### **Competitive Cable Systems**

Our community was approached once, but the provider chose not to enter into any formal discussions. The provider chose to engage in lobbying of the State legislature to avoid having to obtain a franchise in compliance with the State level playing field statute.

### **Conclusions**

The local cable franchising process functions well in the City of Norfolk. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Norfolk therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

**CITY OF NORFOLK**

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